

Edward Vincent King, Jr. (SBN 085726)
KING & KELLEHER, LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111
Telephone: (415) 781-2888
Facsimile: (415) 781-3011
Email: evking@kingandkelleher.com

Attorneys for Plaintiff
MATT MURRAY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATT MURRAY,

Plaintiff,

v.

DATAGUARD USA, LLC, and STEVEN
LEE HASTERT,

Defendants.

CASE NO. _____

**COMPLAINT FOR INFRINGEMENT,
UNFAIR BUSINESS PRACTICES,
INTENTIONAL INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGES, UNFAIR
COMPETITION, AND FALSE
ADVERTISING**

DEMAND FOR JURY TRIAL

Plaintiff, Matt Murray, hereby demands jury trial and alleges:

THE PARTIES

1. Plaintiff, Matt Murray (herein "Murray"), is an individual, who does business of providing document security and destruction services under the trade name "Level 6 Shredding." Level 6 Shredding's principal place of business is located at 139 Collingswood Street, #A, San Francisco, California 94114, and provides services to local, regional, and national customers.

2. Plaintiff is informed and believes and thereon alleges that defendant Dataguard USA, LLC (herein "Dataguard"), is a limited liability company organized and registered pursuant to the laws of the State of Colorado with its principal place of business at 777 South Wadsworth, Building 3, Suite 250, Lakewood, Colorado 80226. Dataguard conducts its business under several

1 fictitious names: Dataguard Services, Dataguard Nation, Dataguard, Inc., Dataguard USA,
 2 Dataguard Express, “Shred Nations,” “Shred Trades,” “Dataalerts!,” “Shred Mall,” “Dataguardian
 3 Times,” Shop ‘N’ Shred,” “Ship ‘N’ Shred,” “Lock Nations,” and Sales Star Networks.

4 3. Plaintiff is informed and believes and thereon alleges that defendant Steven Lee
 5 Hastert (herein “Hastert”) is a resident of Littleton, Colorado, and is the person who directs the
 6 “intercept handling” technologies and activities of defendant Dataguard. Plaintiff is informed and
 7 believes and thereon alleges that defendant Hastert oversees the day-to-day operations of
 8 defendant Dataguard under its various fictional identifies, including search engine optimization,
 9 conversion optimization, and content for the Dataguard websites.

10 **JURISDICTION AND VENUE**

11 4. This court has subject matter jurisdiction over Plaintiff’s claims because they arise
 12 under the Lanham Act, 15 U.S.C. § 1051 *et seq.* Federal subject matter jurisdiction is therefore
 13 conferred by 28 U.S.C. § 1331 (federal question and diversity), 28 U.S.C. § 1338(b) (unfair
 14 competition), and 15 U.S.C. § 1121 (Lanham Act). This court has supplemental jurisdiction over
 15 Wyeth’s state law claims pursuant to 28 U.S.C. § 1367.

16 5. Defendants, and each defendant, are subject to personal jurisdiction in this judicial
 17 district because the tortious acts alleged herein were specifically targeted to occur within this State
 18 and District, and Defendants have made and established contact sufficient to permit the exercise of
 19 personal jurisdiction under California Codes of Civil Procedure § 410.10.

20 6. Venue for this action is proper in this District pursuant to 29 U.S.C. § 1391(b)(2) &
 21 (c), and pursuant to the doctrine of pendant venue.

22 **FACTS**

23 7. In 2007, Matt Murray recognized the need for high quality, high security document
 24 handling and destruction services. He opened his document security and destruction business in
 25 October, 2007, in San Francisco, California. In June, 2007, Murray registered his dba Level 6
 26 Shredding, with San Francisco Office of the Treasurer and Tax Collector and San Francisco
 27 County Clerk. Murray registered www.Level6Shredding.com website with GoDaddy.com, and
 28

1 promotes his business on the Internet via Yelp.com, JudysBook.com, AngiesList.com, Google+,
2 Google Maps, Yahoo, Bing, MapQuest, BBB.org, Google.com, the San Francisco Examiner, and
3 other media outlets. Murray expends \$1,500-\$2,000 per month advertising his services under the
4 trade name Level 6 Shredding.

5 8. Over time, Level 6 Shredding has become an established, identified entity for the
6 provision of highly secure document handling and destruction. Level 6 Shredding is recognized
7 by the public and regularly receives public reviews and comments at Yelp.com, AngiesList.com,
8 JudysBook.com, Google+.

9 9. Murray's efforts to "brand" Level 6 Shredding services have been successful and
10 his distinct trade name "Level 6 Shredding" has developed secondary meaning among the public
11 and is identified as the provider of high quality, high security document handling and destruction
12 services.

13 10. Level 6 Shredding has become the secure document handling and destruction
14 provider of choice for a broad range of organizations (U.S. Department of State, American
15 Express, capital management companies, accountants, medical offices, the City of San Francisco,
16 U.S. Department of Agriculture, architects, construction companies, and global retail chains)
17 located throughout the United States. Level 6 Shredding's secondary meaning and branding
18 within the market for high quality, high security document handling and destruction service is
19 further demonstrated by Defendants' unauthorized and unlawful use of the "Level 6 Shredding"
20 identity to secure economic opportunities for itself and its clients.

21 11. Defendant Dataguard portrays itself as a provider of highly secure document
22 handling and destruction services, but, in fact, does no document handling or document
23 destruction. Dataguard's business is securing business customer leads for operating businesses.
24 Dataguard refers to its practices as "intercept marketing." Dataguard states it "intercepts people
25 looking for your services. We send you their information" Dataguard's efforts are nationwide
26 via the Internet.

1 12. Defendant, at some time prior to April 25, 2014, commenced its “intercept
2 marketing” plan to intercept public customers contacted over the Internet via Dataguard’s various
3 websites. Dataguard referenced Level 6 Shredding in its websites, and customers seeking the
4 services of Level 6 Shredding (*i.e.*, customers responding to Dataguard’s unauthorized advertising
5 of “Level 6 Shredding”) were “intercepted” and directed to competitors of Level 6 Shredding.
6 Dataguard provides “intercepted” customer leads for a fee pursuant to contracts with the
7 purchasers of customer leads.

8 13. Defendant Dataguard implements its “intercept” marketing strategy by unlawfully
9 trading on Level 6 Shredding’s good name and reputation in the marketplace. Below is an excerpt
10 from Dataguard’s “Paper Shredding Pros” website for services in San Francisco, California:

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Paper Shredding in San Francisco, CA

Are you looking for reliable, affordable paper shredding service in San Francisco, California? Paper Shredding Pros is the best place to go when you need to save time and money on paper and document shredding in San Francisco, CA. When you use PaperShreddingPros.com to find a San Francisco paper shredding company you know that you are going to get the lowest rates on high quality, secure paper shredding in San Francisco, CA. Prior to PaperShreddingPros.com, finding a reliable, local paper shredding company in San Francisco, California used to seem impossible, but now it's simple.

San Francisco Paper Shredding Services

PaperShreddingPros.com can help you save time and money on all types of San Francisco paper shredding service, including:

- Mobile Paper Shredding in San Francisco, California
- Off Site Document Shredding in San Francisco, CA
- On-Site Paper Shredding in San Francisco, California
- Product Destruction in San Francisco, CA

Complete the quick and easy on-line quote to get prices on paper shredding service in San Francisco from the top local San Francisco paper shredding companies.

San Francisco Paper Shredding Companies

Shred Nations (inside Union Post Sf Inc)	237 Keamy St San Francisco, CA 94108	Get Prices (quote.php)
Level 6 Shredding	139 Collingwood St, # A San Francisco, CA 94114	Get Prices (quote.php)
Shred Nations (inside Postal Chase)	3053 Fillmore St San Francisco, CA 94123	Get Prices (quote.php)
Shred Nations (inside Postal Chase)	912 Cole St San Francisco, CA 94117	Get Prices (quote.php)
Shred Nations (inside Postal Chase)	58 West Portal Ave San Francisco, CA 94127	Get Prices (quote.php)
Iron Mountain Secure Shredding	50 Crisp Rd San Francisco, CA 94124	Get Prices (quote.php)
Grm Document Management	707 West Tower Avenue, # 101 Alameda, CA 94501 6.5 Miles From San Francisco, CA	Get Prices (quote.php)
Assured Shredding	2430 Willow St Oakland, CA 94607 7.6 Miles From San Francisco, CA	Get Prices (quote.php)
Iron Mountain Secure Shredding	1350 West Grand Ave Oakland, CA 94607 7.7 Miles From San Francisco, CA	Get Prices (quote.php)
Iron Mountain Secure Shredding	336 Oyster Point Blvd South San Francisco, CA 94080 8.0 Miles From San Francisco, CA	Get Prices (quote.php)

Also herein, is an excerpt from Dataguard's "Paper Shredding Pros" website for services in Daly City, California:

Paper Shredding in Daly City, CA

Are you looking for reliable, affordable paper shredding service in Daly City, California? Paper Shredding Pros is the best place to go when you need to save time and money on paper and document shredding in Daly City, CA. When you use PaperShreddingPros.com to find a Daly City paper shredding company you know that you are going to get the lowest rates on high quality, secure paper shredding in Daly City, CA. Prior to PaperShreddingPros.com, finding a reliable, local paper shredding company in Daly City, California used to seem impossible, but now it's simple.

Daly City Paper Shredding Services

PaperShreddingPros.com can help you save time and money on all types of Daly City paper shredding service, including:

- Mobile Paper Shredding in Daly City, California
- Off Site Document Shredding in Daly City, CA
- On-Site Paper Shredding in Daly City, California
- Product Destruction in Daly City, CA

Complete the quick and easy on-line quote to get prices on paper shredding service in Daly City from the top local Daly City paper shredding companies.

Daly City Paper Shredding Companies

Shred Nations (inside Postal Chase)

58 West Portal Ave
San Francisco, CA
94127
2.4 Miles From Daly
City, CA

[Get Prices \(quote.php\)](#)

Level 6 Shredding

139 Collingwood St.
A
San Francisco, CA
94114
4.0 Miles From Daly
City, CA

[Get Prices \(quote.php\)](#)

Shred Nations (inside Postal Chase)

912 Cole St
San Francisco, CA
94117
4.2 Miles From Daly
City, CA

[Get Prices \(quote.php\)](#)

Iron Mountain Secure Shredding

50 Crisp Rd
San Francisco, CA
94124
4.8 Miles From Daly
City, CA

[Get Prices \(quote.php\)](#)

Datasafe

574 Eccles Ave
South San
Francisco, CA
94080
5.0 Miles From Daly
City, CA

[Get Prices \(quote.php\)](#)

Iron Mountain Secure Shredding

338 Oyster Point
Blvd
South San
Francisco, CA
94080
5.1 Miles From Daly
City, CA

[Get Prices \(quote.php\)](#)

Shred Nations (inside Postal Chase)

3053 Fillmore St
San Francisco, CA
94123
6.5 Miles From Daly
City, CA

[Get Prices \(quote.php\)](#)

Shred Nations (inside Union Post Sf Inc)

237 Kearny St
San Francisco, CA
94108
6.6 Miles From Daly
City, CA

[Get Prices \(quote.php\)](#)

Grm Document Management

707 West Tower
Avenue, # 101
Alameda, CA 94501
10.3 Miles From
Daly City, CA

[Get Prices \(quote.php\)](#)

Iron Mountain Secure Shredding

1350 West Grand
Ave
Oakland, CA 94607
12.2 Miles From
Daly City, CA

[Get Prices \(quote.php\)](#)

In each case, Dataguard represents that selecting the Level 6 Shredding "Get Price (quote.php)" icon will obtain information of Level 6 Shredding pricing information. The representation is false. The potential customer selecting "Get Prices" for Level 6 Shredding does not get Level 6 Shredding prices, but is connected to a competitor service. Thus, Dataguard "intercepts" consumer traffic flow from Level 6 Shredding and redirects that consumer traffic flow to Level 6 Shredding's competitors with whom Dataguard has a contractual relationship.

14. Defendant Dataguard maintains additional websites that also suggest false association between itself and Level 6 Shredding. Below are excerpts from Dataguard's "Paper Shredding Pros" website for services in San Francisco, California, and Daly City, California:

Paper Shredding in San Francisco, CA

Are you looking for reliable, affordable paper shredding service in San Francisco, California? Paper Shredding Pros is the best place to go when you need to save time and money on paper and document shredding in San Francisco, CA. When you use PaperShreddingPros.com to find a San Francisco paper shredding company you know that you are going to get the lowest rates on high quality, secure paper shredding in San Francisco, CA. Prior to PaperShreddingPros.com, finding a reliable, local paper shredding company in San Francisco, California used to seem impossible, but now it's simple.

San Francisco Paper Shredding Services

PaperShreddingPros.com can help you save time and money on all types of San Francisco paper shredding service, including:

- Mobile Paper Shredding in San Francisco, California
- Off Site Document Shredding in San Francisco, CA
- On-Site Paper Shredding in San Francisco, California
- Product Destruction in San Francisco, CA

Complete the quick and easy on-line quote to get prices on paper shredding service in San Francisco from the top local San Francisco paper shredding companies.

San Francisco Paper Shredding Companies

Shred Nations (inside Union Post Sf Inc)

Level 6 Shredding

Shred Nations (inside Postal Chase)

Shred Nations (inside Postal Chase)

Shred Nations (inside Postal Chase)

Iron Mountain Secure Shredding

Gm Document Management

Assured Shredding

Iron Mountain Secure Shredding

Iron Mountain Secure Shredding

Paper Shredding in Daly City, CA

Are you looking for reliable, affordable paper shredding service in Daly City, California? Paper Shredding Pros is the best place to go when you need to save time and money on paper and document shredding in Daly City, CA. When you use PaperShreddingPros.com to find a Daly City paper shredding company you know that you are going to get the lowest rates on high quality, secure paper shredding in Daly City, CA. Prior to PaperShreddingPros.com, finding a reliable, local paper shredding company in Daly City, California used to seem impossible, but now it's simple.

Daly City Paper Shredding Services

PaperShreddingPros.com can help you save time and money on all types of Daly City paper shredding service, including:

- Mobile Paper Shredding in Daly City, California
- Off Site Document Shredding in Daly City, CA
- On-Site Paper Shredding in Daly City, California
- Product Destruction in Daly City, CA

Complete the quick and easy on-line quote to get prices on paper shredding service in Daly City from the top local Daly City paper shredding companies.

Daly City Paper Shredding Companies

Shred Nations (inside Postal Chase)

Level 6 Shredding

Shred Nations (inside Postal Chase)

Iron Mountain Secure Shredding

Datasafe

Iron Mountain Secure Shredding

Shred Nations (inside Postal Chase)

Shred Nations (inside Union Post Sf Inc)

Grm Document Management

Iron Mountain Secure Shredding

Defendant Dataguard represents “complete the quick and easy on-line quote to get prices on paper shredding service in San Francisco from the top local San Francisco paper shredding companies” and then lists Level 6 Shredding among other companies. Defendant Dataguard does not contact Level 6 Shredding. Thus, defendant Dataguard falsely represents that inquiries for services and prices will include Level 6 Shredding. Defendant Dataguard also falsely uses the Level 6 Shredding trade name without authorization to attract consumers to its website who are seeking high quality, secure document handling and destruction. Defendant Dataguard thus is trading on Level 6 Shredding’s good reputation to attract customers who are then directed away from Level 6 Shredding.

15. The representations of Defendant Dataguard as alleged herein are false in that Dataguard, contrary to its representations, does not seek service information and rates from Level 6 Shredding, and potential customers who expect to have Level 6 Shredding competing for their business are mislead.

16. Defendant Dataguard represents that its efforts will “get the lowest rates on high quality, secure paper shredding in San Francisco.” Defendant Dataguard suggests that Level 6 Shredding is competing for business with other secure document handling and shredding companies for potential customers’ business but never contacts Level 6 Shredding to provide any information or bids for that business. Defendant Dataguard thereby impliedly represents that Level 6 Shredding services are more expensive or not competitive with those services to which Dataguard directs the potential customers.

17. Plaintiff is informed and believes and therefor alleges that Defendant Dataguard is paid from \$10.00 to \$42.00 for each “intercepted” lead that is taken from the Level 6 Shredding inquiry and directing it to a Level 6 Shredding competitor.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Infringement)

18. Plaintiff hereby repeats, realleges, and incorporates herein all the allegations of Paragraphs 1 through 17.

19. Defendants, and each of them, have intentionally used false or misleading representations of fact in connection with its commercial advertising and promotions for provision of services. Defendants, and each of them, have used the Level 6 Shredding trade name without authorization in their promotions of their “intercept” marketing scheme.

20. The actual result of Defendants’, and each Defendant’s, actions as alleged hereinabove, is that consumers are misled, mistaken and confused as to (1) the true relationship of Defendants to Level 6 Shredding, and (2) the true provider of secure document handling and destruction services.

21. Plaintiff is likely to have been damaged by Defendants’, and each Defendant’s, acts as alleged hereinabove in that Plaintiff has likely lost business, and Plaintiff’s reputation perception in the market place has been and will continue to be damaged by Defendants’ acts.

22. The acts of Defendants, and each of them, as alleged in this Complaint comprise acts of trademark infringement in violation of 15 U.S.C. § 1125(a), and this is an exceptional case due to the intentional fraudulent activities of Defendants.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Unfair Business Practices)

23. Plaintiff hereby repeats, realleges, and incorporates herein all the allegations of Paragraphs 1 through 22.

24. Defendants, and each of them, have used false or misleading representations of fact in connection with its commercial advertising and promotions for provision of services. Specifically, Defendants, and each of them, have represented falsely that it contacts Level 6 Shredding for provision of highly secure document handling and destruction, when, in fact, neither Defendant contacts Level 6 Shredding.

25. The actual result of Defendants’, and each Defendant’s, actions as alleged hereinabove, is that consumers are misled, mistaken and confused as to (1) the true relationship of Defendants to Level 6 Shredding, (2) the true provider of secure document handling and

1 destruction services, and (3) the quality and competitiveness of Level 6 Shredding as compared to
2 its competitors.

3 26. Plaintiff is likely to have been damaged by Defendants', and each Defendant's, acts
4 as alleged hereinabove in that Plaintiff has likely lost business, and Plaintiff's reputation
5 perception in the market place has been and will continue to be damaged by Defendants' acts.

6 27. The acts of Defendants, and each of them, as alleged in this Complaint, comprise
7 acts of unfair trade practices and false advertising in violation of 15 U.S.C. § 1125(a), and this is
8 an exceptional case due to the intentional fraudulent activities of Defendants.

9 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

10 **(Intentional Interference with Prospective Economic Advantages)**

11 28. Plaintiff hereby repeats, realleges, and incorporates herein all the allegations of
12 Paragraphs 1 through 27.

13 29. Plaintiff, through his development of the Level 6 Shredding trade name, achieved
14 competitive advantage against competitors in the secure document handling and document
15 shredding market. Plaintiff's Level 6 Shredding trade name is known in the market place to stand
16 for high quality secure document handling and destruction.

17 30. Defendants, and each of them, through acts alleged hereinabove, that is, through
18 their "intercept marketing" practices, have interfered with prospective customers who were
19 seeking Level 6 Shredding and directed them away from Level 6 Shredding to competitor
20 companies.

21 31. Defendants, and each of them, interfered with Plaintiff's prospective business
22 advantage by intentionally conducting its "intercept marketing" plan by making false statements as
23 alleged herein, using "bait and switch" tactics to redirect consumers seeking out Level 6
24 Shredding to its competitors, and wrongfully unauthorized use of the Level 6 Shredding trade
25 name.

26 32. As an actual and proximate result of Defendants', and each Defendant's, wrongful
27 acts, Plaintiff has been injured by loss of business relationships, implied disparagement of

1 Plaintiff's services, false appearance of the relationship between Plaintiff and Defendant
2 Dataguard.

3 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

4 **(Unfair Competition; California Bus. & Prof. Section 17200)**

5 33. Plaintiff hereby repeats, realleges, and incorporates herein all the allegations of
6 Paragraphs 1 through 32.

7 34. The acts of Defendants, and each of them, alleged herein, comprise unfair
8 competition under California Business and Profession Section 17200.

9 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

10 **(False Advertising; California Bus. & Prof. Section 17500)**

11 35. Plaintiff hereby repeats, realleges, and incorporates herein all the allegations of
12 Paragraphs 1 through 34.

13 36. The acts of Defendants, and each of them, alleged herein, comprise unfair
14 competition under California Business and Profession Section 17500.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, Matt Murray, respectfully requests the following relief against
17 Defendants, and each of them, jointly and severally:

18 1. Defendants, and each of them, and their representatives, agents, servants,
19 employees, attorneys, affiliates, successors and assigns, and any and all persons in active concert
20 with any or all of them be enjoined preliminary and permanently:

- 21 a. From making false and misleading statements and representations about Level
22 6 Shredding;
23 b. From unauthorized use of the Level 6 Shredding trade name in Defendants'
24 advertising;
25 c. An award of damages to Plaintiff according to proof;
26 d. An accounting and award of profits derived by Defendants by their unlawful
27 conduct pursuant to 15 U.S.C. § 1117;

- 1 e. An award of Plaintiff's costs of suit and reasonable attorney's fees as permitted
2 by law;
3 f. An award of pre-judgment and post-judgment interest; and,
4 g. Such other and further relief as the Court finds just.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff, Matt Murray, respectfully demands trial by jury of all issues that may be so tried.

7 DATED: June 18, 2014

Respectfully submitted,

8 KING & KELLEHER, LLP

9
10 By: /s/ Edward Vincent King, Jr.
11 Edward Vincent King, Jr.

12 Attorneys for Plaintiff
13 MATT MURRAY
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